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Subject to Admission *Pro Hac Vice*

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

AARON GRUETER; MARK POREMAN;
ALLAN LIGI; KENNETH CASCARELLA;
ANDREW POKLADOWSKI;
INWOOD CAPITAL PARTNERS LLC;
SANDRA MCALLISTER;
THOMAS DOBRON; LESLIE SCHULTZ;
MICHAEL PESICK and THOMAS BENNETT;

Case No.:

COMPLAINT FOR DAMAGES

Plaintiffs,

vs.

WITHERSPOON BRAJCICH MCPHEE PLLC;
and PETER EDWIN MOYE

Defendants

COMPLAINT FOR DAMAGES

NELSON BOYD, PLLC
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Seattle, Washington 98101
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NATURE OF ACTION

1. This is an action for legal malpractice, breach of fiduciary duty, negligence, and breach of oral contract.

2. Plaintiffs seek damages in the aggregate amount of \$1,000,000 plus costs.

3. Defendant Witherspoon Brajcich Mcphee PLLC, a law firm ("Defendant WBM"), was entrusted with funds by the Plaintiffs in the aggregate amount of \$1,000,000.

4. Defendant Peter Edwin Moye ("Defendant Moye"), a member of Defendant WBM, was at all relevant times acting as the principal agent and member of Defendant WBM.

5. The funds that were entrusted to Defendant WBM by the Plaintiffs were sent by Defendant Moye to a bank account that was not under appropriate control and, as a result, the funds are now missing and all attempts to recover the funds have been unsuccessful.

6. If Defendant WBM had not mishandled the \$1,000,000 entrusted to them by the Plaintiffs, the funds would have been returned to the Plaintiffs.

7. None of the funds entrusted to the Defendant WBM by the Plaintiffs have been returned to the Plaintiffs.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over this action pursuant to 49 U.S. Code §1332 because the amount in controversy is greater than \$75,000 and all the Plaintiffs have different citizenship than all the Defendants.

9. Venue is proper because the principal office of Defendant WBM is within the jurisdiction of this Court and several acts and omissions giving rise to the claims in this action occurred in such jurisdiction.

THE PARTIES

A. The Individually Named Plaintiffs

10. Aaron Grueter is a natural person more than 18 years of age who resides in the State of New Hampshire.

11. Mark Poreman is a natural person more than 18 years of age who resides in the State of Connecticut.

12. Allan Ligi is a natural person more than 18 years of age who resides in the State of California.

13. Kenneth Cascarella is a natural person more than 18 years of age who resides in the State of Tennessee.

14. Andrew Pokladowski is a natural person more than 18 years of age who resides in the State of Connecticut.

15. Inwood Capital Partners LLC is a limited liability company formed and existing under the laws of the State of Connecticut and has no place of business in the State of Washington.

16. Sandra McAllister is a natural person more than 18 years of age who resides in the State of New Jersey.

17. Thomas Dobron is a natural person more than 18 years of age who resides in the State of California.

18. Leslie Schultz is a natural person more than 18 years of age who resides in the State of California.

19. Michael Pesick is a natural person more than 18 years of age who resides in the State of Connecticut

20 Thomas Bennett is a natural person more than 18 years of age who resides in the

1 State of South Carolina

2 **B. The Defendants**

3
4 21. Upon information and belief, Defendant WBM is a professional limited liability
5 company formed under the laws of the State of Washington whose members and are licensed to
6 practice law in the State of Washington.
7

8 22. Defendant WBM's principal office is located at 601 West Main Avenue, Suite 1400
9 Spokane, Washington 99201-0677.

10 23. Upon information and belief, Defendant Moye is a member (also referred to as a
11 "partner") of Defendant WBM and is licensed to practice law in the State of Washington.
12

13 24. Upon information and belief, Defendant More is a resident of the State of Washington.
14

BACKGROUND

15 25. H-Source Distribution-U.S., Inc. ("H-Source") is an e-commerce health care distribution
16 corporation and the US subsidiary of H-Source, Inc. a Canadian corporation. H-Source is in the
17 business of brokering the sale of medical equipment and supplies in the U.S and around the
18 world.
19

20 26. H-Source is, and at all times relevant to this Compliant was, a client of Defendant WBM,
21 and Defendant WBM had an attorney-client relationship with H-Source for the matters
22 described in this Complaint.
23

24 27. On or about August 13, 2021 H-Source entered into an agreement with CCG Trading,
25 Inc., a Wyoming corporation ("CCG Trading") for the sale by CCG Trading to H-Source of six
26 million boxes of Cranberry Evolve 300 nitrile powder free examination gloves manufactured by
27 Cranberry International SDN BHD ("First Supply Agreement").
28

1 28. At some time during the period of mid-August to mid-October, H-Source and CCG
2 Trading decided to amend or replace the First Supply Agreement with a revised supply
3 agreement that would require H-Source to deposit \$1,000,000 in an escrow account as security
4 for its payment obligations under the new supply agreement.
5

6 29. H-Source then identified eleven investors, the Plaintiffs, who were willing to place
7 \$1,000,000 collectively in escrow on behalf of H-Source in exchange for a share of profits from
8 the sale of examination groves to be purchased by H-Source under the new supply agreement.
9

10 30. On or about October 15, 2021, Defendant Moye participated in a Zoom conference
11 call with John Kupice (then CEO of H-Source), Steven Neff (from H-Source), Adam Shaw
12 (from H-Source) and three of the Plaintiffs: Andy Pokladowski, Mark Poreman and David
13 Harrison. One purpose of the call was to explain to proposed escrow arrangement under the
14 proposed new supply agreement.
15

16 31. On or about October 19, 2021, H-Source entered into an agreement with CCG Trading
17 entitled "Addendum Agreement #1", which provided that (i) the First Supply Agreement was
18 cancelled, (ii) H-Source and CCG Trading, by entering into Addendum Agreement #1, were
19 also entering into a revised supply agreement (the "Second Supply Agreement") and an escrow
20 agreement ("Escrow Agreement"), both attached to Addendum Agreement #1, (iii) the parties
21 must complete a trial order sale and purchase as a condition precedent to the Second Supply
22 Agreement ("Trial Order") and (iv) H-Source was required to pledge \$1,000,000 as "Contract
23 Security" (the term used in the agreement) with a deposit into an escrow account pursuant to the
24 Escrow Agreement. The Escrow Agreement is attached hereto as **EXHIBIT 1**.
25

26 32. Addendum Agreement #1 stated "For the purpose of the Trial Order, the legal
27 representative for the Buyer [H-source], Mr. Peter Moye shall be added as an Authorized
28

1 Signatory of the Escrow Agreement and Mr. Moye's signed authority is required for the release
2 of the Contract Security".

3 33. Upon information and belief, the Escrow Agreement was entered into on or about
4 October 19, 2021.

5 34. The parties to the Escrow Agreement were H-Source, CCG Trading, Nouam Financial
6 Consultants Pvt Ltd, an India corporation ("Nouam"), and Emerio Banque Ltd, as escrow agent
7 ("Emerio Banque"), or by unknown parties fraudulently representing themselves to be acting on
8 behalf of Nouam and/or Emerio Banque.

9 35. The Escrow Agreement is unusual in three respects:

10 a. It does not provide the account information to which the escrowed funds are to be sent
11 or state that the escrow agent will provide the bank account information. It merely
12 says in Section I.1, "The Buyer, after execution of this Escrow Agreement shall deliver to
13 the Escrow Agent the amounts necessary for the purchase of the products under the
14 Supply Agreement. . ."

15 b. The Escrow Agreement imposes virtually no obligations on the escrow agent. In fact,
16 Section II.1 provides that: "Notwithstanding any provision to the contrary, the Escrow
17 Agent is obligated only to perform the duties specifically set forth in this Escrow
18 Agreement, which shall be deemed purely ministerial in nature. Under no circumstances
19 will the Escrow Agent be deemed to be a fiduciary to any Party or any other person
20 under this Escrow Agreement." This language is inexplicable because an escrow agent
21 is the very definition of a party with fiduciary duties.

22 c. Nouam is expressly made a party and signatory to the Escrow Agreement but has no
23 obligations under the agreement and its only right is to co-sign payment instructions to
24

1 the escrow agent. The signature page of the Escrow Agreement identifies Nouam as
2 "Financier".

3 36. Upon information and belief, Emerio Banque never conducted the standard account
4 opening procedures in connection with the escrow account, such as anti-money laundering
5 (AML) due diligence, know-your-customer procedures (KYC) and sanctions compliance.

6 37. Upon information and belief, Defendant Moye, as counsel to H-Source, reviewed the
7 First Supply Agreement; Addendum Agreement #1; the Second Supply Agreement; and the
8 Escrow Agreement before they were signed.

9 38. Pursuant to Addendum Agreement #1, in the event that the purchase of the Trial Order
10 was not completed, the escrowed funds were to be returned to H-Source.

11 39. To raise the \$1,000,000 to be placed in escrow, H-Source entered in an agreement with
12 the Plaintiffs entitled "Investors Agreement", effective October 21, 2021 ("Investors
13 Agreement"), pursuant to which the Plaintiffs agreed to deposit \$1,000,000 in escrow in
14 accordance with the Escrow Agreement on or before October 27, 2021.

15 40. Each Plaintiff agreed to place in escrow the following amount pursuant to the Investors
16 Agreement: Aaron Grueter -- \$125,000; Mark Poreman --\$100,000; Allan Ligi --\$100,000;
17 Kenneth Cascarella --\$100,000; Andy Pokladowski --\$100,000; Inwood Capital Partners LLC --
18 \$100,000; Sandra McAllister --\$100,000; Thomas Dobron --\$100,000; Leslie Schultz --
19 \$100,000; Mike Pesick --\$50,000; and Thomas Bennett --\$25,000.

20 41. Upon information and belief, Defendant Moye, as counsel to H-Source, drafted the
21 Investors Agreement.

22 42. The Investors Agreement was signed on or about October 21, 2021.

23 43. On or about October 26, 2021, CCG Trading sent a document to H-Source entitled

1 "Wire & Deposit Instructions" (inexplicably dated October 19, 2021) directing H-Source to
2 send \$1,000,000 to an account at Chase Bank in New York with the account name "Atari
3 Interactive Inc." (account number 530974657). **(EXHIBIT 2)**

4 44. Upon information and belief, Defendant Moye received a copy of EXHIBIT 2 on or
5 about October 26, 2021.

6 45. On or about October 27, 2021, the Plaintiffs collectively wired \$1,000,000 to an account
7 at JP Morgan Chase Bank in New York per wire instructions provided by CCG Trading to H-
8 Source, referred to in allegation #43.

9 46. On or about October 27, 2021, Glen Jackson at CCG Trading forwarded to Defendant
10 Moye an email message from Emerio Banque to Nouam. This email from Emerio Banques
11 states that Atari Interactive Inc. is a NASDAQ listed company, etc.; that remittances from the
12 individuals who were asked to send funds should be cancelled; and that the funds to
13 be placed in escrow should be sent by CCG Trading or H-Source. **(EXHIBIT 3)**

14 47. On or about October 28, 2021, Defendant Moye sent an email to Emerio Banque with
15 an attachment entitled "RE: CORRECTION & REVERSAL OF TRANSFERS; ATARI
16 INTERACTIVE ACCOUNT # 530 974657", in which Defendant Moye wrote: "The following
17 transfers were sent erroneously to the account referenced above ("ATARI")." And "We have
18 instructed the senders to cancel all pending transfers, if any. For all funds that may have posted
19 to the ATARI account already, please return them to the sender." **(EXHIBIT 4)**

20 48. The amount of \$1,000,000 was in fact returned to the Plaintiffs after they sent the said
21 amount to account number 530974657 at Chase Bank in New York.

22 49. Upon information and belief, Defendant Moye then proposed to H-Source that the
23 investors (i.e., the Plaintiffs) send the \$1,000,000 to the client trust account maintained by
24

1 Defendant WBM for forwarding to the escrow account, thereby meeting the requirements set for
2 in the email from Emerio Banque referring to in allegation #46.

3 50. In early or mid-November, CCG Trading sent to H-Source a second document entitled
4 "Wire & Deposit Instructions" (inexplicably dated October 19, 2021, as was the first) directing
5 H-Source to send \$1,000,000 to an account at Chase Bank in New York with the account name
6 "AtariAlphaVerseCBI" (account number 758908854). **(EXHIBIT 5)**

7 51. The Plaintiffs were instructed by H-Source to send \$1,000,000 collectively to the
8 client trust account maintained by Defendant WBM. The Plaintiffs were not given information
9 about the account at Chase Bank in New York referred to in EXHIBIT 5.

10 52. In early or mid-November, the Plaintiffs did send \$1,000,000 collectively to the
11 client trust account maintained by Defendant WBM.

12 53. On November 18, 2021, Defendant WBM sent \$500,000 from the firm's client trust
13 account to the account at Chase Bank in New York with the account name
14 "AtariAlphaVerseCBI" (account number 758908854).

15 54. On November 24, 2021, Defendant WBM sent an additional \$500,000 from the firm's
16 client trust account to the account at Chase Bank in New York with the account name
17 "AtariAlphaVerseCBI" (account number 758908854).

18 55. The Trial Order under the Second Supply Agreement was not completed, which meant
19 that H-Source was entitled to a return of the escrowed funds of \$1,000,000.

20 56. The \$1,000,000 held in escrow was not returned to the H-Source or the Plaintiffs or the
21 Defendants.

22 57. Defendants sought to recover the escrowed funds belonging to Plaintiffs but they were
23 not successful in doing so.

1 58. To date, the Plaintiffs have not received the \$1,000,000 that they sent to the trust
 2 account of Defendant WBM and which is owed to them.

3 **FIRST CAUSE OF ACTION**
 4

5 **(Negligence)**
 6

7 59. Plaintiffs repeat each allegation numbered 1 through 58 above and incorporate by
 8 reference each such preceding allegation as set forth herein.

9 60. In the conference call among Defendant Moye and three of the Plaintiffs, among others,
 10 held via Zoom on October 15, 2021, referred to above in allegation #30, Defendant Moye stated
 11 that the Plaintiffs' funds would be safe in the escrow account and that the funds could not
 12 be moved from the escrow account without Defendant Moye's signature. During the call,
 13 Defendant Moye said, "the million dollars is not at risk. There will be no deduction from that
 14 account especially without my signature" and later in the call Defendant Moye stated, "That
 15 million dollars is not at risk. Adam [Shaw of H-Source] and I have spent 3 days trying to poke
 16 holes in this." This information was passed to the other Plaintiffs by the Plaintiffs that were on
 17 the call. The Plaintiffs relied on Defendant Moye's representation that the funds could not leave
 18 the escrow account without his approval.

19 61. By accepting the Plaintiffs' money into the firm's trust account, Defendant BDM
 20 assumed a duty to the Plaintiffs; specifically, a duty of care in handling the Plaintiffs' funds.
 21 The plaintiffs sent their funds to the trust account of Defendant WBM with the understanding
 22 that the \$1,000,000 would be sent to an escrow account governed by the Escrow
 23 Agreement, and based on oral representations from Defendant Moye, the Plaintiffs believed
 24 that their funds would not be at risk.

25 62. Defendants had a conflict of interest in handling Plaintiffs' funds, i.e., Defendants owed
 26

1 a duty to H-Source, WBM's client, to follow their client's instructions, while at the same time
2 Defendants owed a duty of care to the Plaintiffs in the handling of the Plaintiffs' funds.

3 63. Defendants breached their duty of care to the Plaintiffs by negligently failing to exercise
4 due diligence and investigating questionable facts known to Defendant Moye, which, if
5 investigated, would have caused the Defendant Moye to refrain from sending Plaintiff's funds to
6 a bank account over which Defendant Moye had no control.

7 64. Neither Defendant Moye nor anyone else acting on behalf of Defendant WBM conducted
8 a proper due diligence investigation with respect to the transfer of the Plaintiffs' funds.

9 65. Neither Defendant Moye nor anyone else acting on behalf of Defendant WBM sought an
10 answer to the following question with respect to the first attempted transfer of funds, in which
11 Defendant WBM was not involved but of which it was aware: Why were the funds sent to an
12 escrow account in the name of "Atari Interactive Inc." when Atari Interactive, Inc. was not
13 mentioned in the Transaction Documents, including the Escrow Agreement, and had no apparent
14 role in the escrow arrangement?

15 66. Neither Defendant Moye nor anyone else acting on behalf of Defendant WBM sought an
16 answer the following question: Why wasn't the escrow account at or in the name of the escrow
17 agent, Emerio Banque, Ltd? The website for Emerio Banque (www.emeriobanque.com) states
18 that Emerio Banque can open U.S. dollar accounts.

19 67. Neither Defendant Moye nor anyone else acting on behalf of Defendant WBM questioned
20 the fact that the Escrow Agreement absolved the escrow agent, Emerio Banque, from any
21 fiduciary duty with the following language: "Under no circumstances will the Escrow Agent be
22 deemed to be a fiduciary to any Party or any other person under this Escrow Agreement."

1 68. The Escrow Agreement states that the escrow agent's fee will be "\$NIL". (EXHIBIT 1,
2 Exhibit B thereto),

3 69. Upon information and belief, Defendant Moye, who reviewed the Escrow Agreement
4 before it was signed, did not ask why Emerio Banque agreed to be the escrow agent for no fee.
5

6 70. As stated in allegation #46, on or about October 27, 2021, Glen Jackson at CCG Trading
7 forwarded to Defendant Moye an email message from Emerio Banque to Nouam (EXHIBIT 3),
8 and this information was forwarded to Defendant Moye. Neither Defendant Moye nor anyone
9 else acting on behalf of Defendant WBM sought an answer the following question: Why did the
10 escrow agent address this email to Nouam, who had no responsibility for placing funds in
11 escrow?

13 71. The email from Emerio Banque to Nouam referred to in the previous allegation, which
14 was forwarded to Defendant Moye, states that Atari Interactive, Inc. is a NASDAQ listed
15 company. In fact, Atari Interactive, Inc. is not and never was a NASDAQ listed company, a fact
16 which Defendant Moye could have easily checked. Neither Defendant Moye nor anyone else
17 acting on behalf of Defendant WBM sought to confirm the statement that Atari Interactive was
18 a NASDAQ listed company. This is significant because Emerio Banque stated that the funds
19 to be placed in escrow could only come from H-Source or CCG Trading due to the fact that
20 Atari Interactive, Inc. was a NASDAQ listed company.

22 72. The email from Emerio Banque to Nouam referred to in the previous allegation, which
23 was forwarded to Defendant Moye, goes on to states that because Atari Interactive, Inc. is a
24 NASDAQ listed company, it has regulatory and reporting requirements that made it necessary
25 for the funds to be placed in escrow could only come from H-Source or CCG Trading.
26

1 Defendant Moye did not challenge this explanation even though he, as an experienced corporate
2 attorney, knew or should have known that this explanation was very questionable.

3 73. The second "Wire & Deposit Instructions" sent by CCG Trading to H-Source (EXHIBIT
4 5), which was forwarded to Defendant Moyer before he sent Plaintiffs' funds out of his firm's
5 trust account, directed H-Source to send \$1,000,000 to an account at Chase Bank in New York
6 with the account name "AtariAlphaVerseCBI" (account number 758908854). Neither
7 Defendant Moye nor anyone else acting on behalf of Defendant WBM sought an answer the
8 following questions: Who owns that account, given that the account name is so ambiguous?
9 Why is an account different from the first account being used, given that the email from the
10 escrow agent, Emerio Banque, to Nouam, referred to in allegations ##68 to 70 (EXHIBIT 3)
11 mentioned only requirement that the funds come from a different source, not that they should be
12 sent to a different account? Who designated the account as the escrow account, given that there
13 is no document with the such designation by the escrow agent?

14 74. If Defendant Moye or anyone acting on behalf of Defendant WBM has made appropriate
15 inquiries concerning the ownership of the account at Chase Bank in New York with the account
16 name "AtariAlphaVerseCBI" (account number 758908854), he or they would have learned that
17 the account was owned by Crypto Blockchain Industries, SA, a French company that had
18 nothing to do with the transaction.

19 75. Neither Defendant Moye nor anyone else acting on behalf of Defendant WBM sought an
20 answer from the escrow agent to the following question before sending funds to the account at
21 Chase Bank in New York with the account name "AtariAlphaVerseCBI" (account number
22 758908854): Was the escrow account under the control of the escrow agent and if so, how?
23 This question was relevant because the escrow agent's name did not appear on the account, the
24
25
26
27
28

1 Escrow Agreement does not identify the account, and there is no correspondence or other
 2 documentation describing a connection between the escrow agent and the aforesaid account.
 3

4 76. In a letter dated April 26, 2022, from Defendant Moye to the attorney for Nouam
 5 and Emerio Banque--written after the Plaintiffs' funds were lost--Defendant Moye wrote: "In
 6 my conversations with the Atari general counsel, he informed me in no uncertain terms that
 7 Atari knew nothing about the transactions between CCG and Nouam and that upon noticing the
 8 wire transfers into the Atari account, it prompted them to contact Chase Bank and (i) begin a
 9 fraud investigation, and (2) reverse all the wire transfers." (**EXHIBIT 6**) If Defendant Moye
 10 had contacted the Atari general counsel before releasing the Plaintiff's funds from his firm's trust
 11 account, he would have learned this critical information.
 12

13 77. If the Defendants, and particularly Defendant Moye since he was familiar with the
 14 transaction, had exercised proper due diligence and exercised the Defendants' duty of care by
 15 asking the questions and making the inquiries described in allegations ##65 to 76, Defendant
 16 Moye would have gained information that would have cause him to refrain from sending the
 17 Plaintiffs' funds of out of Defendant WBM's trust account.
 18

19 78. By agreeing to hold \$1,000,000 provided by the Plaintiffs, Defendants assumed a duty
 20 of care to the Plaintiffs, and such duty included the obligation to exercise due diligence when
 21 relevant facts and circumstances relating to instructions from other parties raised serious
 22 questions about the legitimacy of those instructions.
 23

24 79. Defendants' breach of their duty of due care was negligence, and Defendants negligence
 25 was the direct cause of Plaintiffs' loss of \$1,000,000.
 26

SECOND CAUSE OF ACTION

(Legal Malpractice)

27
 28 COMPLAINT FOR DAMAGES

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1 80. Plaintiffs repeat each allegation numbered 1 through 79 above and incorporate by
2 reference each such preceding allegation as set forth herein.

3 81. Defendant Moye is an attorney licensed to practice law in the State of Washington
4 and Defendant WBM is a professional firm that is authorized to provide legal services in the
5 State of Washington.

6 82. At all times relevant to the matters discussed herein, Defendant Moye acted as an
7 attorney and as a member of Defendant WBM.

8 83. The standard of care to which a Washington lawyer is held is that degree of care, skill,
9 diligence and knowledge commonly possessed and exercised by a reasonable, careful and
10 prudent lawyer in the practice of law in the State of Washington.

11 84. The imposition of a professional duty on an attorney does not require an attorney-
12 client relationship.

13 85. Defendants assumed a professional duty to the Plaintiffs when they agreed to hold the
14 Plaintiffs' funds and disburse those funds in accordance with the Transaction Documents.

15 86. By accepting the Plaintiffs' funds, the Defendants were acting for the benefit of their
16 client but Defendants actions, had they produced the intended result, would have benefitted the
17 Plaintiffs in a manner known to Defendants, i.e., the Plaintiffs would have shared profits from
18 the transaction with the Defendants' client.

19 87. Attorneys with experience in business transactions, which Defendant WBM claims to
20 have, understand the importance of due diligence investigations, particularly when questionable
21 circumstances arise.

22 88. Defendants breached their professional duty to Plaintiffs by negligently failing to make
23 inquiries, as lawyers normally would, when they learned facts that can only be described as
24

1 glaring, obvious irregularities in the proposed movement of funds that Defendant Moye
 2 incorrectly believed was required by the Escrow Agreement.

3 89. The negligent failure of the Defendants to conduct an appropriate due diligence
 4 investigation, given so many obvious questions and “red flags”, establishes that the Defendants
 5 did not exercise that degree of care, skill, diligence and knowledge commonly possessed and
 6 exercised by a reasonable, careful and prudent lawyer in the practice of law in the State of
 7 Washington.

8 90. The Defendants' breach of their professional duty to Plaintiffs directly caused a loss to
 9 the Plaintiffs of \$1,000,000 collectively.

10 91. Unquestionably, persons other than the Defendants misappropriated the Plaintiffs' funds,
 11 but that does not alter Defendants' responsibility for Plaintiffs' loss. The negligence of the
 12 Defendants need not be the sole cause of the injury complained of in order to entitle the
 13 Plaintiffs to damages. If the Defendants had not breached their professional duty to Plaintiffs,
 14 Plaintiffs loss of \$1,000,000 would not have occurred.

15 **THIRD CAUSE OF ACTION**

16 **(Breach of Fiduciary Duty)**

17 92. Plaintiffs repeat each allegation numbered 1 through 91 above and incorporate by
 18 reference each such preceding allegation as set forth herein.

19 93. A fiduciary relationship is defined in the Restatement (Second) of Torts § 874 (1979)
 20 as existing between two persons “when one of them is under a duty to act for or to give advice
 21 for the benefit of another upon matters within the scope of the relation.” Such a relationship
 22 imposes on the fiduciary the duty to act in the best interest of the person who has placed his or
 23 her trust and confidence in the fiduciary. As a result, the fiduciary may not simply deal with
 24

1 that party at arm's length, guided only by the morals of the marketplace.

2 94. By accepting Plaintiffs' money into Defendant WBM's trust account and giving
3 assurances to the Plaintiffs that their money would be not be at risk after it was sent, Defendant
4 Moye, and therefore Defendant WBM, became a trustee of Plaintiffs' funds and thereby assumed
5 a fiduciary duty to the Plaintiffs.

6
7 95. WA Rev Code §11.100.010 (2022) provides: "Any corporation, association, or person
8 handling or investing trust funds as a fiduciary shall be governed in the handling and investment
9 of such funds as in this chapter specified. A fiduciary who invests and manages trust assets owes
10 a duty to the beneficiaries of the trust to comply with requirements of this chapter."

11
12 96. The duties of a trustee are described in WA Rev Code §11.100.020 (2022) (Management
13 of trust assets by fiduciary), which provides in relevant part:

14
15 " "(1) A trustee shall invest and manage trust assets as a prudent investor would, by
16 considering the purposes, terms, distribution requirements, and other circumstances
17 of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill,
18 and caution.

19

20
21 (4) A trustee shall make a reasonable effort to verify facts relevant to the investment and
22 management of trust assets.

23

24
25 (6) A trustee who has special skills or expertise, or is named trustee in reliance upon the
26 trustee's representation that the trustee has special skills or expertise, has a duty to use
27 those special skills or expertise."

28 97. WA Rev Code §11.98.014 (2022) clarifies that a trust can be oral.

COMPLAINT FOR DAMAGES

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1 98. Defendants did not act as a “prudent investor” would have. Had the \$1,000,000 belonged
 2 to Defendant WBM, Defendant Moye would not have sent the money to a bank account with
 3 such dubious legitimacy without first asking several obvious questions.
 4

5 99. Defendants breached their fiduciary duty to the Plaintiffs when they acted negligently by
 6 sending the Plaintiffs’ money to a bank account that should have aroused Defendants’ suspicions
 7 because there were so many “red flags”. Defendants were negligent because failed to ask
 8 obvious questions before releasing the Plaintiffs’ money—a failure that is more inexplicable
 9 because Defendant WBM, as a law firm, and Defendant Moye, as a transactional attorney, have
 10 undoubtedly conducted many due diligence investigations for clients in connection with
 11 commercial transactions.
 12

14 100. Defendants’ breach of their fiduciary duty to Plaintiffs was the direct cause of the loss of
 15 \$1,000,000 by Plaintiffs.
 16

FOURTH CAUSE OF ACTION

(Breach of Oral Contract)

19 101. Plaintiffs repeat each allegation numbered 1 through 100 above and incorporate by
 20 reference each such preceding allegation as set forth herein.

21 101. Black’s Law Dictionary (11th ed. 2019) generally defines the escrow function as
 22 holding a legal document or property “delivered by a promisor … for a given amount
 23 of time or until the occurrence of a condition, at which time … [the holder] … is to hand
 24 over the document or property to the promisee.” As Black’s Law Dictionary also notes, the
 25 person or entity serving as the neutral holder is commonly referred to as “an escrow.”
 26

1 103. An escrow agreement, like any other contract, can be an oral contract or it can be in
2 writing.

3 104. There was an oral escrow agreement between the Plaintiffs and the Defendants.
4 Specifically, the Plaintiffs agreed to (and did) deposit \$1,000,000 in the trust account of
5 Defendant WBM. In turn, Defendant WBM, acting through Defendant Moye, agreed to
6 forward the \$1,000,000 to an escrow account that required Defendant Moye's signature before
7 the money could be moved from the escrow account. This element of control by Defendant
8 Moye was relied upon by the Plaintiffs because Defendant Moye earlier made comments to
9 some of the Plaintiffs during a conference call on October 15, 2021, in which he said, in
10 reference to the escrow account, "I am the signatory on behalf of H-Source that is correct. and
11 it doesn't get moved unless I say so." The Plaintiffs relied on this representation.

14 105. The purpose of the oral escrow agreement entered into by the Defendants and the
15 Plaintiffs was to ensure that the Plaintiffs' funds in the amount of \$1,000,000 would be
16 transferred to an account that would meet the requirements of the Escrow Agreement, i.e., an
17 escrow account from which the funds could not be moved without the signature of Defendant
18 Moye.

20 106. Defendant Moye breached the oral escrow agreement with the Plaintiffs by sending
21 money to a bank account over which he had no control.

22 107. Defendant Moye's breach of the oral agreement with Plaintiffs was direct cause of a loss
23 to Plaintiffs in the amount of \$1,000,000.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment jointly and severally against the defendants, and each of them, as follows:

- a. for damages in an amount of \$1,000,000.00;
- b. for costs and expenses incurred in this case;
- c. for pre-judgment and post-judgment interest at the applicable rates as provided by law; and
- d. for such other and further relief as the Court may deem just and appropriate.

JURY DEMAND

Plaintiffs request a jury trial on any issue cognizable by a jury.

DATED this ____ day of August, 2023.

PLAINTIFFS,
By their attorneys,

NELSON BOYD, PLLC
601 Union Street, Suite 2600
Seattle, WA 98101
Tel. 206.971.7601

By: _____
Jeffrey D. Boyd
boyd@nelsonboydlaw.com

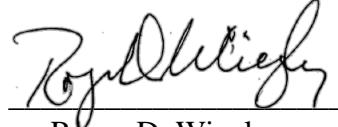
Washington Bar No. 41620

COMPLAINT FOR DAMAGES

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COMPLAINT FOR DAMAGES

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